



**Jatomy Supermarkets Limited aka Jatomy Enterprises Limited v Kenafri
Industries Limited & 2 others (Insolvency Petition E012 of 2022)
[2025] KEHC 3141 (KLR) (Commercial and Tax) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3141 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
INSOLVENCY PETITION E012 OF 2022**

PM MULWA, J

MARCH 13, 2025

BETWEEN

**JATOMY SUPERMARKETS LIMITED AKA JATOMY ENTERPRISES
LIMITED DEBTOR**

AND

KENAFRIC INDUSTRIES LIMITED 1ST RESPONDENT

FAMILY BANK LIMITED 2ND RESPONDENT

GITONGA RINGERA T/A VIEWLINE AUCTIONEERS 3RD RESPONDENT

RULING

1. The matter before this court involves three Notices of Preliminary Objection filed by the Official Receiver and the Respondents herein, dated 19th and 18th February 2025 challenging the competence of the application dated 14th February 2025. The core issues raised include the Applicant's failure to seek leave from the court, as required under Section 432 of the *Insolvency Act*, 2015, and the argument that the directors of the Applicant company no longer have locus standi to initiate the proceedings following the liquidation order made on 16th July 2024. The Official Receiver further argues that Section 226(2) of the *Insolvency Act* restricts secured creditors' rights concerning the company's charged property.
2. The Preliminary Objections were heard through oral arguments by counsel for parties. After considering the arguments advanced, the central issue for determination is whether the objections raised are valid and whether the application dated 14th February 2025 can proceed.



3. As established in *Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696*, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.
4. The matter at hand raises two points of law, that is:
 - i. whether the directors of the Applicant company have locus standi following the liquidation order, and
 - ii. whether the application was filed without the necessary leave from the court, in contravention of Section 432(2) of the *Insolvency Act*, 2015.
5. The central issue of locus standi revolves around whether the directors of the Applicant company retain the right to initiate legal action following the liquidation order. Locus standi is a procedural requirement that determines whether a party has the authority or standing to initiate a legal action. In this case, the Official Receiver and the 1st Respondent argue that the directors of the Applicant company have lost their locus standi because the company was placed under liquidation on 16th July 2024.
6. Section 411 of the *Insolvency Act*, 2015 explicitly provides that upon the appointment of a liquidator, the powers of the company's directors immediately cease. This provision effectively removes the authority of the directors to act in any capacity, including initiating or defending legal proceedings on behalf of the company.
7. In the case of *Omondi & Another v National Bank of Kenya Ltd & 2 Others* Nairobi HCCC No. 958 of 2001, Ringera, J (as he then was) held inter alia that:

“..although it is true that the appointment of a receiver manager has the effect of rendering the board of directors functus officio, it does not destroy the corporate existence and personality of the company. That appointment makes the directors unable to act in the name of the company but, as I understand the law, it does not make them in their capacity as members equally disabled. On that view, it was open to the two plaintiffs in the name of the company, but only in the name of the company, to institute the present proceedings which relate to alleged wrongs against the company qua company. But they definitely lacked legal competence to institute the suit in their own names in their capacities as directors and shareholders.”
8. Given that the directors of the Applicant company had no authority to bring the application dated 14th February 2025 I find the application is inherently defective due to their lack of locus standi.
9. The second issue raised in the Preliminary Objection concerns the Applicant's failure to seek the court's leave before applying. Section 432 (2) of the *Insolvency Act*, 2015, explicitly stipulates that:

“When a liquidation order has been made or a provisional liquidator has been appointed, legal proceedings against the company may be begun or continued only with the approval of the Court and subject to such conditions as the Court considers appropriate.”
10. This provision is clear, once a liquidation order has been made, any legal proceedings against the company cannot proceed without first obtaining the court's approval. The requirement is meant to protect the integrity of the liquidation process and prevent unnecessary or improper interference in the administration of the company's assets.



11. The Applicant contends that the application is one for contempt and that it does not directly affect the liquidation process, thereby exempting it from the provisions of Section 432(2). However, the court finds that the application seeks to interfere with the liquidation process and challenges the actions of the Official Receiver, which directly impacts the company's creditors and its assets. Therefore, even if the application is framed as one for contempt, it is still subject to the requirement for court approval under Section 432(2).
12. The Official Receiver argues that it was only required to publish a notice of appointment and that the actions taken by the liquidator on behalf of the company were within the liquidator's powers. The court agrees with this assertion.
13. Insolvency proceedings aim to preserve the Company's assets for the benefit of all the creditors. I find no basis to interfere with the liquidator's powers as exercised in this case.
14. In *Nakumatt Holdings Limited & another v Ideal Locations Limited* [2019] eKLR, the Court of Appeal held that:

“The administration of an insolvent company is for the benefit of all creditors of such company and a situation where creditors separately attack or take assets of a company would defeat the overall objective of the administration.”
15. In light of the foregoing, I find the directors of the Applicant company lack the locus standi to initiate the application, as their powers ceased upon the liquidation order. Additionally, the failure to seek leave from the court as mandated by Section 432(2) of the *Insolvency Act*, 2015, renders the application fatally defective.
16. Consequently, I find that the Notice of Preliminary Objection raised by the Official Receiver and the Respondents are merited and I uphold the preliminary objections. The application dated 14th February 2025 is struck out for being incompetent and defective.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Wageni for Applicant

Mr. Kyalo for Official Receiver

Court Assistant: Carlos

